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Juris Libris — Building an Estate Planning Collection for the Pro Se Patron

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In today's economy with the cost of legal services becoming exorbitant, many people believe that with a little knowledge they can draft their own legal documents without seeking the services of a professional. Estate planning is one of those areas where people believe they no longer need to consult an attorney. There are numerous will forms available on the market and attorneys have written books on how to draft simple wills. Thus, many people consult self-help books for guidance in planning their estates and they often turn to their local library as a source for obtaining these materials. A basic estate planning collection, therefore, is an asset to any library which caters to adult patrons. Although no collection will meet all the estate planning needs of every patron, a basic collection should include: your state statutes (whether embodied in the appendix of a volume, or the actual state code), books which contain sample forms, and basic estate planning information. Don't panic! Many books contain all three elements. However, it is important to make sure that the books you purchase are relevant to your state, current, and written on a level that the majority of your patrons can understand

Books Containing Forms, Statutes, and Basic Information

To begin your collection, you should select a basic book that contains your state's statutory information, sample forms, and information which both explains the reason behind each clause in the form and how to fill out the form correctly. If money is available and a sufficient client demand for these items exists, you might wish to purchase the

volumes which attorneys in your state use to draft wills. In Oklahoma, that comprehensive source is by Kaufman and Jones entitled *Oklahoma*

Estate Planning, Will Drafting and Estate Administration Forms, Charlottesville, Va.: Michie-Butterworth, c1995. This is a two-volume, looseleaf set which sets out the Oklahoma statutes, states the laws, explains both simple and complex estate planning techniques, gives detailed instructions on drafting wills and other estate planning documents, and has numerous sample wills and sample clauses which can be added to the sample wills. Because it is updated frequently, the patron can be assured the will he drafts will be in compliance with the latest Oklahoma law. And although it is written by attorneys for use by other attorneys, most patrons could still understand the concepts and instructions provided with only occasional assistance from a *Black's Law Dictionary*.

If this is out of the question, or if you are in a border area with patrons from more than one state, an excellent alternative is the most recent edition of *All-States Wills and Estate Planning Guide* by the Judge Advocate General's School, U.S. Army, Chicago: American Bar Association, c1993. This book is a guide for preparing a valid will in all fifty states and most American commonwealths. Although written for military attorneys, most lay persons could use this book. The language is straight-forward and the format is easy to follow. It begins by explaining simple estate planning principles which are relevant to all patrons in all states and American commonwealths. It then proceeds to discuss each clause of a basic will, giving examples, alternatives, and instructions as to how to choose between clauses. Next, it lists state by state, in alphabetical order, the basic descent and distribution laws, will requirements, types of wills allowed (whether statutory, holographic, or nuncupative wills are acceptable), and the required language for the self-proving clause in each state. When states and commonwealths have unique wills requirements, such as Louisiana and Puerto Rico, several sample wills are given. Statutory wills are also provided for California, Maine, Michigan and Wisconsin. However, some patrons may feel uncomfortable using this book because a fill-in-the-blanks will (except for the above noted exceptions) is not available for com-

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parison. Still, the clarity of the language and the organization of the book in the order of an actual will is sufficient for most patrons to draft their own will.

If you have doubts, a very simple will book is *Nolo's Simple Will Book* by attorney **Denis Clifford**, Berkeley: Nolo Press, 1992. Writing in layman's terms for the self-help patron, Mr. Clifford takes the prospective will-drafter through each of the steps necessary to draft a valid will in every state, except Louisiana. This book contains six basic will forms and one chapter of will clauses to guide the reader in tailoring his or her will to his or her own specific situation. He even covers such basic topics as typing the will and will formalities. However, there were a few discrepancies in the book. For example, in Oklahoma the testator must publish his will, i.e. tell his witnesses, "This is my will." The author stated that will ceremonies typically have the testator stating, "This is my will, but neglects to state that in Oklahoma the testator must make this statement to have a valid will. Thus, although this book is extremely easy to use, a copy of your state's will statutes should also be available to the patron who uses this book.

Another option for obtaining forms, laws, and information is to purchase continuing legal education books from your state bar association. CLE's (as they are often labeled) have concise commentary on the current status of that state's law, short statutory quotes (and sometimes entire portions of the relevant state statutes), and almost all have general forms at the end of each section. Wills and trusts information will be contained in CLE's for beginners, such as *Learning the In's and Out's of Oklahoma Legal Practice*, and in topical CLE's such as wills, trusts, and estate planning. The danger in purchasing CLE material is that each book varies in quality and substance. Each section of the book is prepared by a different attorney. Some attorneys just submit an outline of their notes, which may not be very helpful. Some gear their materials for those who already possess an in-depth knowledge of their field of practice, which will be too complicated for most library patrons. Yet, many attorneys can and do write simple, clear explanations and instructions which can be used by almost anyone. The bar association may be able to recommend titles for your collection, but this may vary from state to state. These books may often be purchased at reduced prices from the bar association.

Books Containing Basic Concepts

After you have chosen a basic will book with forms and, hopefully, some statutory information for your state, the next step is to flesh out your collection with general books on estate planning. Many patrons may just

want to familiarize themselves with the basic issues, techniques, and terminology necessary to intelligently converse with an attorney or estate planner. The majority of the books on the market fall into this category. A few of these books have sample documents for illustration, but do not have enough guidance to help the average patron write a valid will. Although no collection should be composed of just these books, this type of book gives the reader the necessary knowledge to understand some of the more complicated self-help will books which contain actual forms. These books are generally less expensive than the will books with forms, so obtaining several books in this category should fit nicely into the library's budget. Listed below are some of the books which would be most helpful.

A Guide to Wills, Funerals & Probate by **Theodore E. Hughes** and **David Klein**, New York: Charles Scribner's Sons, c1987. Written in layman's terms and easy-to-read format, this book contains a wealth of information for handling a death. The book is structured in two parts. The first part addresses death from the patron's perspective. It addresses reasons to write a will, the basic issues a will should cover, living wills, locating the patron's assets, probate avoidance techniques and funeral arrangements. The second part is written from the perspective of the patron who has just lost a loved one. It details how to negotiate with funeral parlors, describes the different arrangements that can be made for the body of a loved one, and takes one through the legal process. It distinguishes the circumstances when one can go through a Small Estate Summary Probate Procedure and when it is necessary to go through the regular probate proceeding. This book is helpful for a number of reasons. First, it is simplistic and can help the patron get his or her affairs in order. Secondly, it gives many examples of estate planning documents, such as a sample will, codicil to a will, living will, letter of instruction, holographic will, letter of authority, and notification of creditors. These documents are all examples of valid documents in the state of Michigan. Finally, the book contains numerous tables which compare the law in all fifty states. Thus, it could assist patrons in all common law states to draft a valid will; however, because the book was written in 1987, an updated version of the wills statutes in your state should be made available to the patron.

The Commonsense Guide to Estate Planning by **Robert H. Runde** and **J. Barry Zischang**, New York: Business One Irwin, c1994. Written by attorneys, this book caters to wealthy patrons who are seeking estate planning advice. The authors advocate using a team of financial advisers, including a financial planner, an attorney, and an insurance agent. The book includes a simple will (which may or may not be valid in your state), a living will, and a table of intestate

succession laws by state. This book is not written from the perspective of assisting the patron in drafting his own will, but from the standpoint of educating the client of various estate planning techniques which will provide for his (or her) family after death, and the necessary documents to enable the client to have a complete estate plan. The book talks at length about the reasons for purchasing life insurance, ways to gauge whether the life insurance policies you have now are sufficient to care for your family should you die, and how to provide for young children, who the court will not allow to take the proceeds of a life insurance policy. The book also considers probate and describes some ways to avoid probate, such as trusts and joint tenancies, and the scenarios which make one option better than the other. It also contains several chapters on what to do with a family-owned business. It discusses the problems inherent in keeping the business in the family, finding a prospective buyer, and tax solutions. It is a well-written book for those who want to educate themselves before seeking professional advice from lawyers, insurance agents and financial planners. (It even tells patrons what to look for in choosing a professional, what types of degrees and experience the professional should have, and an approximate price range for their services.) This is a good book to have in your estate planning library; however, it should not be the only one on this topic.

60 Minute Estate Planner by **Sandy F. Kraemer**, Englewood Cliffs, N.J.: Prentice Hall, c1994. ***60 Minute Estate Planner*** is a guide to getting one's affairs in order so that one may, hopefully, plan his or her estate with a sixty minute visit to an estate planner. It lists basic documents [living trust, will, bypass trust, appointment of guardian of minor, testamentary trust for minor, joint ownership documents, beneficiary designations, durable power of attorney, medical durable power of attorney, and living will] which should be included in a basic estate plan. It has sample charts for various income brackets which show how one's income will be distributed between heirs and estate taxes. It has no will or trust forms, but does have a form for a Designation of Guardian Outside the Will and a Statutory Power of Attorney. It has many suggestions of creative ways to leave bequests to the patron's loved ones. It is meant to help him or her understand the basic estate planning concepts so that he or she



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can speak coherently with an attorney and be proactive in planning an estate. It covers life insurance, annuities, business agreements, and charitable giving.

The Five-Minute Lawyer's Guide to Estate Planning by Michael Allan Cane, New York: Dell Books, c1995. Written in simple, easy-to-understand language, attorney Michael Cane explains basic estate planning concepts by using a question and answer format and analogies. He covers wills, trusts, durable power of attorneys, life insurance, joint tenancies, gifts to minors, gift and estate taxes, and probate procedure. He outlines the basic elements of a will. However, he does not give any examples. This book is not intended to be a guide to writing a will. Its purpose is to explain why a person should have a will and basic estate planning techniques. He does tell people where they can go to purchase will kits and the approximate prices for these kits. But his book alone could not be used to draft a will. I would recommend adding this book to your estate planning collection.

The Complete Book of Wills and Trusts, With Checklists and Forms, by Albert M. Lehrman, Englewood Cliffs, N.J.: Institute for Business Planning, c1978. This book is an exhaustive treatment of wills and trusts. It has checklists of everything an attorney needs to gather together to draft a will, checklists of

everything to do to properly execute a will and exhaustive treatment of the law and will clauses. It also has samples of complex wills and trusts, as well as simple ones. The book's only drawback is that it is dated. The laws of wills and trusts have changed in many areas since 1978. For example, the Unified Credit is now \$600,000, while the Unified Credit Table stops at 1981. (This is amazing since the reprint date is 1979!) This is the only book that I found with actual checklists to ensure that everything was done correctly. However, one must weigh the usefulness of the checklists against the datedness of the law in the charts. Much of the book is still useful. The danger is whether the patron would know to update the research. If the library's clientele are highly educated, this book would be an excellent resource for them. If the library has patrons who only want one book to show them everything, this is not the one book to own!!

A Layman's Guide to Louisiana Wills and Trusts published by Juris Press, c1983. This book describes the basic laws of property, intestacy, forced heirship, and estate taxes in Louisiana in plain English so that the lay person can determine whether he or she needs to write a will. The book explains what one can do with a will and what one cannot do. It contains one chapter on holographic wills, but it takes the position that the lay person should not attempt to write his or her own will. The book contains no forms, but does contain a comprehensive estate planning data sheet which

anyone could use as a guide to getting their affairs in order. Simply put, this book is useful for any library which may have patrons who are residents of Louisiana due to the background information on Louisiana estate law. This book, in connection with a book with forms, would be beneficial to *pro se's* attempting to write their own wills.


Other Necessary Books

In addition to books on wills and trusts, the estate planning collection should contain a few other books as well. The most important non-will book is a legal dictionary. I would recommend a recent edition of ***Black's Law Dictionary*** by Henry Campbell Black, St. Paul, Minn.: West Publishing Co. Although

some of the above-listed books have glossaries, there are always some terms which are not defined clearly. A law dictionary is a definite asset to any self-help collection.

Another book or set of books which are recommended is a set of your state's statutes, or if your state publishes it, a separate volume which contains all the laws on wills for your particular state. This is necessary (unless you have purchased a volume which is updated frequently) because the laws of wills could potentially change each year. Although in reality much of the laws of wills has stayed the same since the 1800's, sometimes the legislature throws a curve ball. For example, the Oklahoma legislature has set out in the statutes the proper signatory clause for Oklahoma wills, the official self proving clause for a self-proving will, and the official Living Will in its entirety. Their actions made portions of the wills books held by libraries invalid as to these clauses. It is important that the *pro se* patron have access to their state's statutes of wills.


Conclusion

A basic estate planning collection is an asset to any library which is frequented by adult patrons. Due to the cost of professional estate planners, many patrons prefer to draft their own estate planning documents or research their options before consulting an estate planner. A viable collection can be maintained on a tight budget if books are chosen which contain statutory appendices (updating these yearly or as new editions are published), forms, and basic estate planning concepts. A legal dictionary should also be added to the collection. Estate planning books are always a good investment because they will be heavily used and may attract new patrons to your library. 

Cases of Note
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1081 (9th Cir. 1989); ***Harris v. Emus Records***, 734 F.2d 1329 (9th Cir. 1984).

Finally, Maaherra argued that the Foundation's claim was barred under the holdings of these cases because the Foundation intended to defraud the Copyright Office when it stated it was the "proprietor of a work made for hire" and she asserts that the "Foundation did not want to reveal to the Copyright Office that the 'authors' were celestial beings because the Copyright Office would have rejected the application." The Court also found no merit to this contention. The Foundation deposited two copies of the Book with the Copyright Office and the Book "clearly describes its own origin as having been created at the instance of: 'Planetary celestial supervisors [who initiated] those petitions that resulted in the granting of the mandates making possible the series of revelations of which this presentation is a part.'"

In concluding, the Second Circuit Court of Appeals reversed and remanded the lower court opinion holding that the Foundation's renewal copyright was valid and that Maaherra had infringed upon the same. 



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